



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:316. Petroleum Storage Tank Environmental Assurance Fund eligibility criteria for
6 [Certification of] contracting companies and partnerships.

7 RELATES TO: KRS 224.10-420, 224.10-440, 224.60-130, 224.60-140

8 STATUTORY AUTHORITY: KRS 224.60-130(1)(a)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1) requires the
10 cabinet to establish by administrative regulation the procedures to administer the financial
11 responsibility and petroleum storage tank accounts of the Petroleum Storage Tank
12 Environmental Assurance Fund, and authorizes establishment of eligibility criteria for [the
13 ~~certification of partnerships and~~] companies and partnerships that engage in corrective action.
14 This administrative regulation establishes eligibility criteria for [~~certification of~~] companies or
15 partnerships that contract with eligible owners and operators seeking reimbursement for the
16 performance of [to perform] corrective action at petroleum storage tank facilities.

17 Section 1. Eligibility[~~Certification~~] Requirements. (1) [~~A company or partnership who~~
18 ~~contracts with an eligible owner or operator to perform corrective action shall be certified by the~~
19 ~~cabinet. The cost of corrective action performed by a company or partnership not certified shall~~
20 ~~not be reimbursable.~~

(2)] To be eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet, a[the] company or partnership shall:

(a) Employ or contract with a Professional Engineer (P.E.) licensed with the Kentucky Board of Licensure for Professional Engineers and Land Surveyors, in accordance with KRS 322, or a Professional Geologist (P.G.) registered with the Kentucky Board of Registration for Professional Geologists, in accordance with KRS 322A~~[one (1) or more individuals certified by the cabinet pursuant to 401 KAR 42:314];~~

(b) Hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;

(c) Maintain, at a minimum, general and professional liability insurance and pollution/property coverage in the amount of \$1,000,000 dollars; and~~[Provide to the cabinet applicable work experience to demonstrate the technical, administrative and financial capability to perform and manage corrective action at a facility; and]~~

(d) Be approved in writing by the cabinet as eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet~~[eertified]~~ to perform corrective action services ~~[in Kentucky]~~.

(2)(a) By January 1, 2012 any company or partnership holding an existing contract with a petroleum storage tank owner or operator seeking reimbursement shall comply with subsection (1) of this section and shall submit the PSTeAF Eligible Company or Partnership Application, DEP6073;

(b) The applicant shall retain a copy of the application for their records.

~~(3) [This requirement shall apply to corrective actions initiated on or after July 1, 1999.~~

1 (4)] An authorized representative of an eligible~~[a-certified]~~ company shall sign an
2 application or claim payment request in addition to the eligible owner or operator. The
3 eligible~~[certified]~~ company shall certify that:

4 (a) The information or payment request has been reviewed and is true and correct; and

5 (b) Each claim payment cost is reasonable, necessary, and was performed in compliance
6 with 401 KAR Chapter 42.

7 Section 2. Application Requirements. (1) An applicant for company or partnership
8 eligibility ~~[certification]~~ shall submit:

9 (a) A completed PSTEAF Eligible Company or Partnership Application,
10 DEP6073,~~["Certified Company or Partnership Application", DEP 6073, (January 2006)];~~

11 (b) Verification of the employment or contracting of a Professional Engineer (P.E.)
12 licensed with the Kentucky Board of Licensure for Professional Engineers and Land Surveyors,
13 in accordance with KRS 322, or a Professional Geologist (P.G.) registered with the Kentucky
14 Board of Registration for Professional Geologists, in accordance with KRS 322A;~~[one (1) or~~
15 ~~more individuals certified pursuant to 401 KAR 42:314;~~

16 ~~(c) As references, the names and addresses of three (3) previous clients for whom~~
17 ~~environmental remediation has been performed by the company. If none, the applicant shall~~
18 ~~provide the names and addresses of three (3) previous or current clients of the individual~~
19 ~~certified pursuant to 401 KAR 42:314;~~ and

20 ~~(c)~~~~(d)]~~ A list of the names and address of officers and principals of the applicant~~[-and if~~
21 ~~applicable, a list of all stockholders].~~

(2) Cabinet staff may inspect the records and business premises~~[facilities]~~ of the applicant if necessary to verify information in the application or to assist in the evaluation of the applicant's capabilities.

(3) The cabinet may require additional information and documentation if necessary to verify information in the application~~[the applicant's actual work experience]~~.

(4) An application for eligible~~[certified]~~ company or partnership status shall be denied if the applicant:

(a) Fails to provide the information required in the application or in this administrative regulation;

(b) Does not meet the requirements of subsection (1) of this section;

~~(c) [Does not hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;~~

~~(d)] Fails to allow cabinet staff to access company records for audit purposes pursuant to 401 KAR 42:335;~~

~~(d)[(e)] Fails to provide additional information and documentation requested by the cabinet to verify that the requirements of this administrative regulation have been met;~~

~~(e)[(f) Fails to demonstrate the technical, administrative and financial capability to perform and manage corrective action at underground storage tank facilities;~~

~~(g)] Provides false or misleading information in the application;~~

~~(h) Has an officer, director, principal, or stockholder who has had a certification, granted pursuant to 401 KAR 42:314, revoked or suspended;~~

1 ~~(i) Has an officer, director, principal, or stockholder who was an officer, director,~~
2 ~~principal, or stockholder in a certified company, previously having had its certification revoked~~
3 ~~or suspended;]~~ or

4 ~~(f)(j)]~~ Fails to maintain general and professional liability insurance and
5 pollution/property coverage.

6 (5) An applicant whose application for company or partnership eligibility~~[certification]~~ is
7 denied may appeal the determination by requesting a reconsideration or hearing pursuant to KRS
8 224.10-420, 224.10-440, and 401 KAR 100:010.

9 (6) The cabinet shall issue a letter of eligibility~~[certificate]~~ to a qualifying applicant [,
10 ~~indicating certification pursuant to this administrative regulation].~~

11 Section 3. Amended Applications. (1) An eligible company or partnership shall submit
12 an amended application when any of the information in the PSTEAF Eligible Company or
13 Partnership Application has changed.

14 (2) The cabinet may request an updated application upon the receipt of information
15 indicating any change to application information.

16 Section 4. Eligibility~~[3. Certification]~~ and Renewal Procedures. (1) The cabinet shall issue
17 a letter of eligibility~~[certificate]~~ to each company that successfully complies with this
18 administrative regulation. ~~[The certificate shall be renewed two (2) years from the date of~~
19 ~~certification. The certified company shall be responsible for renewing certification prior to~~
20 ~~expiration.]~~

21 (2) Eligibility shall be renewed two (2) years from the date of the letter of eligibility. The
22 company or partnership shall be responsible for renewing eligibility prior to expiration.

1 (3)[(2)] An application for eligibility renewal shall be submitted to the cabinet on the
2 PSTEAF Eligible Company or Partnership Application, DEP6073.

3 (4) Corrective action costs incurred, after the expiration date, shall be ineligible for
4 reimbursement upon the failure of the company or partnership, under contract with an owner or
5 operator, to renew eligibility. [~~"Certified Company or Partnership Application", DEP 6073,~~
6 ~~(January 2006).~~

7 ~~(3) Actions performed by a certified company, under contract with an owner or operator,~~
8 ~~that fails to renew its certification, shall be ineligible for reimbursement of corrective action~~
9 ~~costs incurred after the expiration date.]~~

10 Section 5.[4.] Revocation [~~or Suspension~~] of Eligibility[~~Certification~~]. (1) A letter of
11 eligibility[~~certification~~] issued pursuant to this administrative regulation shall be revoked [~~or~~
12 ~~suspended~~] if [~~the certified company~~]:

13 (a) The eligible company or partnership or[~~Or~~] its employee or agent knowingly submits
14 materially false information or[~~;~~] documentation, or a false payment request to an owner,
15 operator, or the cabinet;

16 (b) The eligible company or partnership or a current officer, director or principal of that
17 company, has been convicted of an environmental crime; or

18 (c) The eligible company or partnership has[~~Has permitted an employee, agent or~~
19 ~~subcontractor to violate a provision of 401 KAR Chapter 42, or to perform corrective action in~~
20 ~~violation of the standards of the State Fire Marshal or the cabinet;~~

21 ~~(e) Has~~] failed to comply with the terms set forth in 401 KAR 42:335;

1 (d) The eligible company or partnership~~[Has negligently, incompetently, recklessly or~~
2 ~~intentionally violated a provision of this chapter or a required federal, state or local regulation,~~
3 ~~code or standard relating to corrective action;~~

4 (e) Has] obtained eligibility~~[the certification]~~ through fraud or misrepresentation.~~]; or~~

5 (f) ~~Fails to perform a corrective action in a manner consistent with state or federal laws~~
6 ~~and regulations for safety or corrective actions, or fails to perform a corrective action consistent~~
7 ~~with generally acceptable professional standards.]~~

8 (2) The cabinet shall issue a letter by certified mail notifying a noncompliant ~~[certified]~~
9 company or partnership that its eligibility~~[certification]~~ has been revoked ~~[or suspended]~~ by
10 action of the cabinet.

11 (3) A person whose eligibility~~[certificate]~~ is ~~[suspended or]~~ revoked may appeal the
12 determination by requesting a hearing pursuant to KRS 224.10-420, 224.10-440, 401 KAR
13 42:320, and 401 KAR 100:010~~[100:010]~~.

14 Section 5. Incorporation by Reference. (1) "PSTEAF Eligible Company or Partnership
15 Application," DEP6073, (April 2011)~~["Certified Company or Partnership Application", DEP~~
16 ~~6073, (January 2006)]~~, is incorporated by reference.

17 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
18 law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor~~[Underground~~
19 ~~Storage Tank Branch, 81 C. Michael Davenport Boulevard]~~, Frankfort, Kentucky 40601,
20 Monday through Friday, 8 a.m. to 4:30 p.m.

21 (3) This material is also available~~], excluding state holidays, and may also be obtained]~~
22 on the Division of Waste Management's Web site at http://waste.ky.gov/ust~~[page located at~~
23 ~~www.waste.ky.gov.]~~

401 KAR 42:316 approved for filing.

4/14/11
Date

LK Peters
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe
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Telephone: (502) 564-6716 Fax (502) 564-4049
Email: Cassandra.Jobes@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes eligibility criteria for companies and partnerships that contract with eligible owners and operators seeking reimbursement from PSTEAF for the performance of corrective action at petroleum storage tank facilities.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish application and eligibility requirements for companies and partnerships.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statute by establishing eligibility requirements for companies and partnerships performing corrective action at petroleum storage tank facilities where the owner or operator is seeking reimbursement from the PSTEAF.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation currently assists in the effective administration of the statute by establishing criteria for companies and partnerships.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment changes the certification to eligibility and changes the application form. The amendment also clarifies revocation language and removes suspension language.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to make it easier for contractors to be eligible to work on petroleum storage tank sites where corrective action is necessary.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms by to the content of the authorizing statute by requiring an eligible company or partnership to perform corrective action at a UST facility where the owner or operator is seeking reimbursement from the PSTEAF.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the statute because there will only be company and partnership certification. There is no longer a requirement for individual contractor certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

There are currently 62 certified companies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Eligible companies and partnerships will have to employ or contract with a P.E. or a P.G.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Most eligible companies and partnerships already have a P.E. or P.G. on staff.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

By being an eligible company or partnership, the owner or operator of the UST facility may be reimbursed for the performance of corrective action.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There is no additional cost associated with this amendment.

(b) On a continuing basis:

There is no additional cost associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The funding source for the implementation of this amendment is the PSTeAF.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in fees will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or

indirectly increased any fees:

This amendment does not establish or affect any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is not applied. All eligible companies and partnerships have to meet the same eligibility requirements and fill out the same application.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:316

Contact Person: Cassandra Jobe

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.60-130(1)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This amendment will not bring in revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This amendment will not bring in revenue.

(c) How much will it cost to administer this program for the first year?

It will not cost the agency additional funds to implement this amendment.

(d) How much will it cost to administer this program for subsequent years?

It will not cost the agency additional funds to implement this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the "PSTEAF Eligible Company or Partnership Application", DEP 6073, (April 2011). This document is to be submitted by companies and partnerships applying for eligibility for reimbursement for the performance of corrective action at petroleum UST sites.

This document consists of 7 pages.